

R. HATHAWAY AND M. HUBBELL, EXECUTRIX OF W. AND
J. FLINN.

FEBRUARY 29, 1840.

Laid on the table.

Mr. RUSSELL, from the Committee of Claims, made the following

REPORT:

The Committee of Claims, to whom have been referred the several petitions of Richard Hathaway, William Flinn, and Mary Hubbell, executrix of James Flinn, deceased, asking compensation for horses lost in the military service of the United States, report :

That, at the 1st session of the 24th Congress, petitions were presented by Richard Hathaway, William Flinn, and Mary Hubbell, executrix of James Flinn, deceased, in the House of Representatives of the United States, and referred to the Committee of Claims. The petitioners then stated that Hathaway and the two Flinns were in the service of the United States, in the year 1812, in a company of rangers commanded by Captain William Perry; that, in October of that year, in a campaign up the Illinois river against the Kickapoo Indians, three horses were lost in the night season—one belonging to Hathaway, one to James Flinn, and one to William Flinn; and that it was most probable the said horses were taken by the Indians. Hathaway and William Flinn testified to the loss of the three horses, and that they belonged to the respective individuals above referred to. William Houston also testifies to the loss of the three horses, and that he was a member of Captain William Perry's company of rangers; but he states no other fact, showing that he possessed any means of knowledge touching the conclusions to which he arrived—not even that he was with the company in this attack upon the Kickapoo towns.

The testimony of Captain Perry did not accompany the applications; and in the absence of it, and no satisfactory reasons having been given why it was not produced, the claims would have been rejected for that cause, if no other had existed—the testimony of the commanding officer always having been required, when it was attainable; and for this defect of testimony, among other reasons, the claims were then rejected.

These claims were again referred, in the House of Representatives, to the Committee of Claims, in the year 1838, and also in the year 1839; but no reports appear to have been made thereon in either year. The testimony on which the claims were renewed was taken in 1838, twenty-six years after the alleged loss, and are much more full than the testimony before submitted.

It is now stated that Captain *Perry* was not the commanding officer of the company of rangers, to which the individual soldiers above referred to be-
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longed; but that John Hopkins was the commandant of said company, Captain Perry having resigned. The discrepancy which appears between the testimony first introduced to sustain the claim, and that taken at the remote period of 26 years after the occurrence took place, will be observed by a comparison of the respective affidavits. All said depositions are made a part of this report, and herewith submitted. The affidavit of John Hopkins, who, it is now said, commanded this expedition against the Kickapoo Indians, is produced, to avoid the objection heretofore taken, that the testimony of the commanding officer was necessary to substantiate claims of this kind. This affidavit is also taken on the 6th of March, 1838. Waiving, however, all objections as to form, and the objection which necessarily arises from the great delay in making application for remuneration for the losses in question, the committee apprehend that there are objections to the merits of these claims which are insurmountable.

By the law of 1812, under which the company of rangers in question was raised, they received one dollar per day for their services, *the use and risk* of their horses, their forage, and equipments.

The risk of the horses in question was upon the owners, who received therefor an equivalent in the large amount of their *per diem* allowance; their loss not having been occasioned by any of the casualties against which the Government guaranty, it must be borne by their owners. This is not only the rule which has uniformly governed this committee in deciding upon claims of this kind, but is the principle upon which the legislation of Congress has been based hitherto. With these views, the committee are of opinion that the claims of the petitioners cannot be granted, and therefore offer for the consideration of the House the following resolution:

Resolved, That the prayer of the petitioners ought not to be granted.